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DAY PITNEY LLP 7 TIMES SQUARE NEW YORK, NY 10036-7311			EXAMINER HAMMOND III, THOMAS M	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/747,754	<b>Applicant(s)</b> PLONSKI, ARNOLD	
	<b>Examiner</b> THOMAS M. HAMMOND III	<b>Art Unit</b> 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Claims***

1. This action is in reply to the Applicant's response to the First Office Action on the Merits filed on 12/14/2004.
2. Claims 1-4, 10, 19, and 22-24 have been amended
3. Claims 1-24 are currently pending and have been examined.

***Previous Claim Rejections - 35 USC § 112***

4. Claims 1, 2-4, 10, 19, and 22-24 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner appreciates the Applicant's prompt attention to these deficiencies and hereby withdraws such rejections.

## ***Response to Arguments***

5. With regard to claims 1-2, 5, and 13-24, the Applicant argues that the Whalley reference does not teach, "purchasing shares of a plurality of stocks". The Examiner respectfully disagrees and points to the rejection below, whereby Whalley in at least page 2, paragraph 16, clearly teaches the formation of a stock portfolio based on various indices. The Applicant further argues that the Whalley reference does not disclose, "writing a number of call options and a number of put options for each of said plurality of stocks". The Examiner asserts that the Applicant is arguing away from the rejection of record. Furthermore, the Examiner asserts that the Whalley reference, in at least page 1, paragraph 10 & page 2 paragraphs 15-16, clearly teaches writing a number of call options on a stock or portfolio of stocks represented in an index or ETF. The Applicant even further argues that the E\*Trade reference does not disclose, "plurality of stocks being the stocks represented in an index or exchange traded fund". The Examiner again asserts that the Applicant is arguing away from the rejection of record. The Applicant still further argues that the E\*Trade reference does not disclose, "particular guidance as to when the options should be written". The Examiner asserts that the new grounds of rejection, as shown below, necessitated by Applicant's amendments to the claimed invention, clearly teaches, in at least page 2, paragraphs 18-21 of the Whalley reference, the systematic management of option cycles. Additionally, the Applicant argues that the Whalley reference does not disclose, "writing of put options". The Examiner again asserts that the Applicant is arguing away from the rejection of record and that this limitation is clearly disclosed in the E\*Trade reference, in at least pages 2-4. Even further still, the Applicant argues that the E\*Trade reference does not disclose, "closing out in-the-money options". The Examiner asserts that, in light of the new grounds of rejection, necessitated by Applicant's amendments to the claimed invention, this limitation is clearly taught in the Whalley reference in at least page 8, paragraphs 65-66. Furthermore, the Applicant's allegation of improper hindsight reasoning for combining these references is not persuasive. Accordingly, claims 1-2, 5, and 13-24 remain rejected, as described below.

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6. With regard to claims 3-4, 6-7, and 11-12, the Applicant argues their allowability based on their dependency to the independent claims. As shown above, the Applicant's arguments are not persuasive. Furthermore, the Applicant's allegation of improper hindsight reasoning for combining references is not persuasive. Accordingly, claims 3-4, 6-7, and 11-12 remain rejected as shown below.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

8. Claims 1-2, 5, and 13-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Whaley et al.*, US Patent Publication No. 2003/0225657 A1, in view of *E\*Trade, "Option Centre: Covered Combinations"*, 05/15/2003.

#### **As per claim 1**

##### ***Whaley teaches:***

- Purchasing shares of a plurality of stocks thereby providing a portfolio, said plurality of stocks being the stocks represented in an index or exchange traded fund, said shares being purchased in proportion to the weighting of the respective stocks in said index or exchange traded fund (see at least page 2, paragraphs 15-21)
- At the beginning of each options cycle, writing a number of call options for each of said plurality of stocks (see at least page 2, paragraphs 15-16; page 1, paragraph 10)
- At the end of each options cycle, letting the out-of-the-money options expire and closing out the in-the-money options (see at least page 8, paragraphs 65-66)

##### ***Whaley does not teach:***

- At the beginning of each options cycle, writing a number of put options for each of said plurality of stocks

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***E\*Trade teaches:***

- At the beginning of each options cycle, writing a number of put options for each of said plurality of stocks (see at least pages 2-4)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, to add the teachings of E\*Trade. One would have been motivated to do so in order to provide an investor the ability to receive premium income in exchange for being willing to double his stock position in the event of a downward price move (see at least E\*Trade page 1).*

*With regard to claims 22-24, the applicant recites methods substantially of the same scope as claim 1. These claims accordingly, are rejected in substantially the same manner as claim 1, as described above.*

**As per claim 2**

***Whaley, in view of E\*Trade, teaches the method of claim 1, as described above.***

***Whaley does not teach:***

- Wherein, for each of said plurality of stocks, said number of call options and said number of put options is equal to the number of shares of stock purchased

***E\*Trade teaches:***

- Wherein, for each of said plurality of stocks, said number of call options and said number of put options is equal to the number of shares of stock purchased (see at least pages 2-4)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, to add the teachings of E\*Trade. One would have been motivated to do so in order to provide an investor the ability to receive premium income in exchange for being*



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*willing to double his stock position in the event of a downward price move (see at least E\*Trade page 1).*

**As per claim 5**

***Whaley, in view of E\*Trade, teaches the method of claim 1, as described above.***

***Whaley does not teach:***

- Wherein, for each of said plurality of stocks, a strike price for said number of call options is above the market price of the respective stock at the time of writing, and a strike price for said number of put options is below the market price of the respective stock at the time of writing

***E\*Trade teaches:***

- Wherein, for each of said plurality of stocks, a strike price for said number of call options is above the market price of the respective stock at the time of writing, and a strike price for said number of put options is below the market price of the respective stock at the time of writing (see at least page 2)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, to add the teachings of E\*Trade. One would have been motivated to do so in order to provide an investor the ability to receive premium income in exchange for being willing to double his stock position in the event of a downward price move (see at least E\*Trade page 1).*

**As per claims 13-19**

***Whaley, in view of E\*Trade, teaches the method of claim 1, as described above.***

***Whaley further teaches:***

- Wherein said index is the Dow Jones Industrial Average (see at least page 2, paragraph 16)
- Wherein said index is the Standard and Poors 100, or a substantial portion thereof reflecting the S & P 100 (see at least page 7, Table 4)

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- Wherein said index is the NASDAQ 100, or a substantial portion thereof reflecting the NASDAQ 100 (see at least page 7, paragraph 62)
- Wherein said exchange traded fund is chosen from the group consisting of Spiders, DIAMONDS and QUBEs (see at least page 7, paragraph 62)
- Wherein said index is chosen from the group consisting of any other index, exchange traded fund or suitable portfolio grouping that trades options (see at least page 7, paragraph 62)
- Wherein premiums are received for writing a number of call options and a number of put options, an wherein said premiums are retained in the portfolio, and some portion of said premiums are used in said step of closing out the in-the-money options (see at least page 8, paragraphs 65-66)

**Whaley does not teach:**

- Wherein said index is chosen from the group consisting of the American Exchange Indices

*However, the examiner takes OFFICIAL NOTICE that American Exchange Indices, such as WEBS (World Equity Benchmark Series), are old and well known in the art of finance. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, in view of E\*Trade, to include these well known indices. One would have been motivated to do so in order to provide an investor the ability to receive an investible index for which real financial instruments based on the functionality of the index can be created and actively traded (see at least Whaley page 1, paragraph 6).*

**As per claim 20**

**Whaley, in view of E\*Trade, teaches the method of claim 1, as described above.**

**Whaley does not teach:**

- Wherein in said step of writing a number of call options and a number of put options, said call options are covered and said put options are covered

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***E\*Trade teaches:***

- Wherein in said step of writing a number of call options and a number of put options, said call options are covered and said put options are covered (see at least page 2)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, to add the teachings of E\*Trade. One would have been motivated to do so in order to provide an investor the ability to receive premium income in exchange for being willing to double his stock position in the event of a downward price move (see at least E\*Trade page 1).*

**As per claim 21**

***Whaley, in view of E\*Trade, teaches the method of claim 1, as described above.***

***Whaley does not teach:***

- Wherein said steps of writing a number of call options and a number of put options and closing out the in-the-money options is performed using computer automation

***E\*Trade teaches:***

- Writing a number of call options and a number of put options and closing out the in-the-money options is performed using computer automation (see at least page 2)

*Furthermore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the writing and closing out steps, since it has generally been recognized that merely providing an automatic means to replace a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, (see *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958).*

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9. Claims 3-4, 6-7, and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Whaley*, in view of *E\*Trade*, in further view of, *Lim*, *US Patent Publication 2003/0014345 A1*.

**As per claims 3-4**

***Whaley, in view of E\*Trade, teaches the method of claim 1, as described above.***

***Whaley does not teach:***

- Wherein, for each of said plurality of stocks, a strike price for the call options is equal or to a strike price for the put options
- Wherein, for each of said plurality of stocks, said strike prices of said put and call options are chosen to be as close as available to the market price of the stock at the time of writing

***Lim teaches:***

- Wherein, for each of said plurality of stocks, a strike price for the call options is equal to a strike price for the put options (see at least pages 19-20, Table 6)
- Wherein, for each of said plurality of stocks, said strike prices of said put and call options are chosen to be as close as available to the market price of the stock at the time of writing (see at least pages 19-20, Table 6)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, in view of E\*Trade, to include the teachings of Lim. One would have been motivated to do so in order to provide an investor with a fully flexible and user-friendly system of managing their risk (see at least Lim page 1, paragraph 6).*

**As per claim 6**

***Whaley, in view of E\*Trade, teaches the method of claim 1, as described above.***

***Whaley does not teach:***

- Wherein, for each of said plurality of stocks, a strike price for said number of call options is below the market price of the respective stock at the time of writing, and a strike price for said number of put options is above the market price of the respective stock at the time of writing

***Lim teaches:***

- Wherein, for each of said plurality of stocks, a strike price for said number of call options is below the market price of the respective stock at the time of writing, and a strike price for said number of put options is above the market price of the respective stock at the time of writing (see at least page 20, Table 6)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, in view of E\*Trade, to include the teachings of Lim. One would have been motivated to do so in order to provide an investor with a fully flexible and user-friendly system of managing their risk (see at least Lim page 1, paragraph 6).*

**As per claim 7**

***Whaley, in view of E\*Trade, teaches the method of claim 2, as described above.***

***Whaley does not teach:***

- Wherein, for each of said plurality of stocks, an expiration date for said call options is equal to an expiration date for said put options

***Lim teaches:***

- Wherein, for each of said plurality of stocks, an expiration date for said call options is equal to an expiration date for said put options (see at least pages 19-20, Table 6)

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*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, in view of E\*Trade, to include the teachings of Lim. One would have been motivated to do so in order to provide an investor with a fully flexible and user-friendly system of managing their risk (see at least Lim page 1, paragraph 6).*

**As per claim 11**

***Whaley, in view of E\*Trade, teaches the method of claim 1, as described above.***

***Whaley does not teach:***

- Implementing a vertical call credit spread combination for said portfolio

***Lim teaches:***

- Implementing a vertical call credit spread combination for said portfolio (see at least page 17, Table 6)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, in view of E\*Trade, to include the teachings of Lim. One would have been motivated to do so in order to provide an investor with a fully flexible and user-friendly system of managing their risk (see at least Lim page 1, paragraph 6).*

**As per claim 12**

***Whaley, in view of E\*Trade, in further view of Lim, teaches the method of claim 11, as described above.***

***Whaley does not teach:***

- Wherein said step of purchasing a vertical call credit spread combination comprises writing a first call option at a first strike price and purchasing a second call option at a second strike price, wherein said second strike price is greater than said first strike price

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***Lim teaches:***

- Wherein said step of purchasing a vertical call credit spread combination comprises writing a first call option at a first strike price and purchasing a second call option at a second strike price, wherein said second strike price is greater than said first strike price (see at least page 17, Table 6)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, in view of E\*Trade, to include the teachings of Lim. One would have been motivated to do so in order to provide an investor with a fully flexible and user-friendly system of managing their risk (see at least Lim page 1, paragraph 6).*

10. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Whaley*, in view of *E\*Trade*, in further view of, *Viner*, *US Patent Publication 2006/0020526 A1*.

**As per claim 8**

***Whaley, in view of E\*Trade, teaches the method of claim 1, as described above.***

***Whaley does not teach:***

- Implementing a collar for said portfolio to reduce or minimize losses during market declines

***Viner teaches:***

- Implementing a collar for said portfolio to reduce or minimize losses during market declines (see at least Figure 5 and associated text)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, in view of E\*Trade, to include the teachings of Viner. One would have been motivated to do so in order to provide an investor with full participation up to the call strike and full protection below the put strike and full participation above the long call strike (see at least Viner page 3, Table 1).*

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**As per claim 9**

***Whaley, in view of E\*Trade, in further view of Viner, teaches the method of claim 8, as described above.***

***Whaley does not teach:***

- Wherein said step of implementing a collar further includes the step of writing an index option call and purchasing an index option protective put

***E\*Trade teaches:***

- Writing index options (see at least page 4)

***Viner teaches:***

- Wherein said step of implementing a collar further includes the step of writing an option call and purchasing an option protective put (see at least Figure 5 and associated text)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, in view of E\*Trade, to include the teachings of Viner. One would have been motivated to do so in order to provide an investor with a structure to eliminate the need to pay option premiums (see at least Viner page 5, Table 3).*

**As per claim 10**

***Whaley, in view of E\*Trade, in further view of Viner, teaches the method of claim 9, as described above.***

***Whaley does not teach:***

- Wherein a premium received for said step of writing said index option call is chosen to be as close as available to a premium spent for said step of purchasing an index option protective put

***E\*Trade teaches:***

- Writing index options (see at least page 4)



***Viner teaches:***

- Wherein a premium received for said step of writing said index option call is substantially equal to a premium spent for said step of purchasing an index option protective put (see at least Figure 5 and associated text)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the teachings of Whaley, in view of E\*Trade, to include the teachings of Viner. One would have been motivated to do so in order to provide an investor with a structure to eliminate the need to pay option premiums (see at least Viner page 5, Table 3).*

## ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas M. Hammond III whose telephone number is 571-270-1829. The examiner can normally be reached Monday-Thursday, 7:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Thomas M Hammond III

Patent Examiner, Art Unit 3691

US Patent &amp; Trademark Office

02/25/2008

/Hani M. Kazimi/

Primary Examiner, Art Unit 3691